



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, DC 20460

OFFICE OF  
CHEMICAL SAFETY AND  
POLLUTION PREVENTION

**Environmental Protection Agency  
Office of Pesticide Programs  
Registration Division  
Minor Use and Emergency Response Branch**

**August XX, 2019**

**Subject: Request for Public Comment Regarding the Environmental Protection Agency's Re-evaluation of the FIFRA 24(c) Review Process**

**INTENT OF DOCUMENT**

Section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) states that *"A state may provide registration for additional uses of federally registered pesticides formulated for distribution and use within the state to meet special local needs..."* Many of these special local needs registrations are for additional uses not authorized by the EPA-approved label – e.g., applying the pesticide to a different crop (provided a tolerance exists for that crop) to address an outbreak of disease, adding an alternative application method that suits the practices of that state, or adding a new pest species that is not on the federal label. However, rather than providing for state registration of additional uses not included on the EPA-approved label, some states issue 24(c) registrations that are more narrow than the federal label, for example, adding a more restrictive application cut-off date, adding training and certification requirements, or limiting the number of treatments permitted by the EPA-approved label.

In the traditional situation, where a state issues a 24(c) registration with labels that expand the uses permitted under the EPA-approved label, the user has a strong incentive to acquire and follow the 24(c) label. However, where the 24(c) label is not received with the pesticide upon purchase, applicators may have a choice of labels (i.e., one more limited and one less limited), which could undermine the state's attempt to limit use and present obstacles to enforcement.

The intent of this document is to request public comment regarding EPA's updated legal view about restrictive 24(c) actions. EPA is requesting comment on the review process for 24(c) registrations and appropriate approaches for state lead agencies (SLAs) to register pesticide products that are more restrictive than the EPA approved label.

## **DEFINITIONS and FIFRA CITATIONS**

### **Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)**

FIFRA is the federal statute that governs the registration, distribution, sale, and use of pesticides in the United States. With certain exceptions, a pesticide is any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, or any nitrogen stabilizer. Generally, before a pesticide may be sold or distributed in the United States, it must be registered with the EPA.

#### **Section 24(a) of FIFRA**

The states' authority to regulate pesticides under their own inherent authority (i.e., police power) is limited but not preempted by FIFRA. Section 24(a) of FIFRA provides that *"A State may regulate the sale or use of any Federally-registered pesticide or device in the state, but only if and to the extent the regulation does not permit any sale or use prohibited by this Act."* Most states have adopted their own state-specific laws and regulations for pesticides. In such states, even though a given pesticide product may have an EPA-approved registration allowing the distribution and sale of the product within the United States, a state may have additional requirements that must be met before the pesticide product can be distributed, sold, or used within that state. The requirements vary between the states and may include additional data and licensing requirements or the addition of restrictions on pesticide use within the state's jurisdiction.

#### **Section 24(c) of FIFRA**

Section 24(c) of FIFRA provides authority to states to register an additional use of a federally registered pesticide product, or a new end use product to meet special local needs, if certain conditions are met. These registrations (also referred to as "special local need" (SLN) registrations) automatically become FIFRA registrations (allowing use only within the authorizing state) unless EPA disapproves within 90 days. An SLN most commonly refers to a pest problem occurring in a particular state that is not being adequately controlled by currently available pesticides. Examples of common 24(c) registrations include: authorizing use against a pest species not approved on the federal label, use of an additional application method, or applications to a different crop to address a pest outbreak.

EPA reviews 24(c) registrations, and may disapprove if, among other things, the use is not covered by necessary tolerances; or the use has been previously denied, disapproved, suspended or canceled by the Administrator; or voluntarily canceled subsequent to a notice concerning health or environmental concerns. In addition, EPA must determine whether the SLN meets the requirements of FIFRA, since 24(c) registrations become federal registrations within 90 days unless EPA objects to them.

## **REQUEST FOR COMMENT**

### **Summary**

Section 24(a) of FIFRA allows a state to regulate the sale or use of any federally registered pesticide in the state, but only if the state regulation does not permit any sale or use prohibited by FIFRA. Thus section 24(a) allows states to regulate a pesticide more strictly than EPA. In contrast, section 24(c) of FIFRA allows states to register “additional uses of federally registered pesticides” to meet special local needs within the state.

However, there have been examples in the past where, rather than registering additional uses not found on the EPA-approved label, some 24(c) registrations have included more restrictions than the EPA-approved label. Examples include the addition of more restrictive cut-off dates, the inclusion of additional training requirements, restrictions regarding timing of applications, and restricting the use directions by limiting the number of treatments permitted by the federal label. The concern is that by claiming authority under section 24(c) for state registrations with more restrictive label language, rather than using their state authorities allowed under section 24(a), states appear to be acting in a manner inconsistent with FIFRA. Also, having 24(c) registrations that are more restrictive than the federal label has the potential to result in enforcement concerns, since in many circumstances applicators may be able to choose between the more restrictive 24(c) label and the less restrictive EPA-approved label. In addition, there could be circumstances where the applicator didn’t know of the existence of the 24(c) label.

### **EPA Request**

Because section 24(c) of FIFRA gives states the authority to register additional uses and because 24(a) is an avenue by which a state could include language that is more restrictive than what is on the federally approved label, EPA is re-evaluating its current section 24(c) policy which permits states to issue special local need registrations which are more restrictive than the federal registration. EPA is re-evaluating its approach to future 24(c) registrations that are more restrictive than the federally approved label.

EPA is requesting public comment on its desire to clarify the issues that have been raised under the current 24(c) policy that can also affect the review process. EPA’s clarification will involve a discussion about the appropriateness of state lead agencies submitting 24(c) registrations that are more limited than the EPA-approved label. Questions to consider include: 1) what are the best and most viable ways for states to accomplish restrictions which are beyond those contained on the federal label; 2) are there situations where more restrictive 24(c) registrations would meet purposes of FIFRA; 3) what are the impacts if states are unable to impose further label restrictions?

To submit comments in response to this document, please follow the online instructions for submitting comments outlined within the Notice of Availability posted at [ [HYPERLINK "http://www.regulations.gov"](http://www.regulations.gov) ] under docket identification (ID) number EPA-HQ-OPP-2019-0443. Do not submit any information you consider to be Confidential Business Information

(CBI) or other information whose disclosure is restricted by statute. For additional information, you may contact Kable Bo Davis at (703) 306-0415 or [ HYPERLINK "mailto:davis.kable@epa.gov" ].